IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1336 OF 2007

Shri Shivsharan Shivbal Havale ..Petitioner
Vs.
Shri Vishwanath Shivlingappa Alange ..Respondent

WITH
WRIT PETITION NO. 1640 OF 2007

Shri Sharanappa Gurulingappa and anr. ..Petitioners
Vs.
Shri Vishwanath Shivlingappa Alange ..Respondent

Mr. R.G. Ketkar for petitioners.
Mr. R.D. Deshmukh i/by Mr. R.S. Alange for respondent.

**CORAM: B.H. MARLAPALLE, J.**

**Date : March 23, 2007.**

**P.C.:**

1. Both these petitions can be conveniently disposed off by modifying the interlocutory orders passed by the Lower Appellate Court and which are challenged separately in these petitions.

2. While allowing the application for stay to the impugned decree of eviction passed separately against the petitioners in these two petitions and at the behest of the common landlord, the Lower Appellate Court has imposed certain conditions. The first

condition is to deposit cash security for a sum of Rs.2 lacs and second condition is to deposit an amount of Rs.5000/- per month towards the rental charges at market rate. In Writ Petition No. 1336 of 2007, it has been further stated that the stay to the decree of possession will be operative for a period of three months or till the appeal is decided, whichever is earlier.

3. There is no dispute that the standard rent for both the shops has been fixed and the same is Rs.250/- per month though the area of the shops is slightly different. There is no evidence to show that any other nearby premises of the same size are being paid rental charges at Rs.5000/- per month. If the Lower Appellate Court was apprehensive that some third party interest may be created by the tenants during the pendency of the appeal if the decree of possession is stayed, the court was not without powers to prohibit the same rather than asking to deposit a cash security of Rs.2 lacs each specially when the shop premises are about 200 sq.ft. and 271 sq.ft.

4. Hence, the impugned orders in these petitions are modified as under:-

> "The execution and implementation of the decree to the extent of delivery of possession is stayed during the pendency of the appeal subject to the condition that the appellants shall continue to deposit in the court or to pay the landlord the standard rent amount every month and they shall not create any third party interest by any means in respect of the respective suit premises during the pendency of the appeal."

. The appeal shall be heard and decided as expeditiously as possible and preferably within a period of six months from the receipt of the writ from this court.

5. Petitions disposed off in terms of the above modifications. The parties have furnished an undertaking before this court that they shall not seek unwarranted adjournments before the Lower Appellate Court.

**(B.H. Marlapalle,J.)**